

ALAN FRENCH

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO:

Keri Johnson
City Clerk
City of Upland
460 North Euclid Avenue
Upland, California 91786



Recorded in Official Records
San Bernardino County

Bob Dutton
Assessor-Recorder-County Clerk

DOC # 2022-0113626

03/25/2022
02:47 PM
SAN
15190

Titles: 1 Pages: 11

Fees:	\$0.00
Taxes:	\$0.00
CA SB2 Fee:	\$0.00
Total:	\$0.00

**This document is exempt from the
Payment of a recording Fee pursuant
To Government Code Section 27383**

(Space Above Line For Recorder's Use Only)

ENCROACHMENT LICENSE AGREEMENT

The CITY OF UPLAND, a California municipal corporation ("City"), hereby grants a revocable license to Upland Unified School District, ("Licensee"), to maintain the "Encroachment" (as defined below) upon the "Property" (as defined below) for the use and benefit of Licensee, and in consideration thereof, Licensee agrees to comply with all terms and conditions set forth in this Encroachment License Agreement (this "Agreement").

1. Encroachment. Licensee shall be permitted to construct, maintain, and use an electronic changeable-copy sign shown as Exhibit A, attached hereto and incorporated herein by this reference, upon the City's Property, shown as Exhibit B, attached hereto and incorporated herein by this reference, or such other improvements as otherwise permitted by City from time to time (the "Encroachment").

2. Property. City is the owner of that certain property located in the City of Upland, County of San Bernardino, State of California, known as: existing City right-of-way located at the southeast corner of Foothill Boulevard and San Antonio Avenue, and more particularly depicted in Exhibit B attached hereto (the "Property"). City's ownership of the Property shall not be affected by this Agreement in any manner whatsoever and Licensee shall not acquire any rights in the Property whatsoever as a result of the Encroachment except those rights specifically granted herein.

3. Conditions of Approval for Encroachment. The Licensee shall comply with all of the following conditions of approval for this Encroachment:

- A. The electronic changeable-copy sign shall be installed and maintained or replaced in a safe and sanitary condition and otherwise in accordance with all applicable governmental laws, ordinances and regulations at the sole cost, risk and responsibility of Licensee.
- B. The electronic changeable-copy sign shall be limited to only advertising school activities and events, or School District messages; except as specified in Condition

of Approval “D” below, and shall not be used to advertise any commercial messages of any kind that are not specifically related to School activities and events, or School District messages.

- C. The electronic changeable-copy sign shall not exceed seventeen feet (17) in height with a ground clearance of ten (10) feet, shall not exceed a sign area of eighty (80) square feet in size, and shall be setback a minimum of 25 feet east of the concave wall at the corner of Foothill Boulevard and San Antonio Avenue and the edge of the sign no closer than one foot from the sidewalk along Foothill Boulevard.
- D. The Licensee shall allow the City from time to time, without cost to the City, to use the electronic changeable-copy sign for public use announcements and City events or activities at the City’s request. The City shall file a request with the Licensee to use the electronic changeable-copy sign which specifies the message and duration of time. The Licensee shall process the City’s request in a timely manner and shall not be unreasonably withheld.
- E. The electronic changeable-copy sign’s message display intervals shall change no more frequently than one every eight (8) seconds, and that blinking and/or moving characters shall be prohibited except when necessary to change the message display.
- F. The sign shall be dimmed to a maximum of 20% brightness capacity, or to the satisfaction of the Development Services Director, between the hours of 10:00 p.m. and 6:00 a.m., to reduce light and glare impacts.
- G. As outlined below, the sign message shall be static before and after the school day to prevent traffic hazards for pedestrians/students accessing the school. The sign shall display a static message:
 - a. For 30 minutes before the start of the school day.
 - b. For 30 minutes after the end of the school day.
- H. The electronic changeable-copy sign shall be properly maintained in a neat and clean condition at all times, and that any inoperative or improper lighting components of the sign shall not impair the appearance and legibility of the sign. Any and all inoperative conditions of the sign shall begin repairs within seventy-two (72) hours of notice to Licensee.
- I. The electronic changeable-copy sign shall not create a traffic hazard by distracting drivers or obstruct traffic visibility.
- J. The electronic changeable-copy sign shall be designed and constructed so it will not create excessive glare as determined by the Development Services Director.

- K. The pole supporting the sign shall contain a 3-foot by 3-foot river rock cover a minimum of eight (8) feet in height and contain a decorative concrete cap.
- L. The Licensee shall submit construction plans and details of the electronic changeable-copy sign to the Engineering Division, Building and Safety Division and the Planning Division for review and permit issuance.
- M. The Sign shall be placed within a landscaped planter. The planter shall be identified on the site plan submitted for plan check, with proposed plants identified. All landscaping shall be maintained and kept in good condition by Upland Unified School District, to the satisfaction of the Development Services Director.

4. Indemnification. Licensee shall defend, indemnify, protect, and hold City, its officers, employees, agents, and volunteers, free and harmless from, and pay in full, any and all claims, proceedings, demands, losses, causes of action, liability, damages, costs or expenses (including, without limitation, reasonable attorneys' fees) that City may sustain or incur in any manner resulting from the Encroachment (whether the construction, installation, removal, maintenance, use, repair, replacement or presence thereof), including any and all claims for all injuries (including personal injury, disability, dismemberment and death), illness, losses, loss of or damage to property, damages, claims, liabilities or expenses of any kind or nature to any person that is not caused, or alleged to be caused, by the negligent acts or omissions of City or its agents or employees. Licensee will act in good faith to ensure that use is safe and compliant with all applicable codes.

In case any action or proceeding is brought against City by reason of any such claim, Licensee, upon notice from City, shall defend the same at Licensee's expense by counsel satisfactory to City, including without limitation the payment of all consequential damages, reasonable attorneys' fees, and other related costs and expenses and Licensee shall pay and satisfy any judgment, award, or decree that may be rendered against the City. Licensee shall reimburse City for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Licensee's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City. All duties of Licensee in this section shall survive termination of this Agreement.

5. Insurance. Licensee shall maintain a policy of liability insurance issued by an insurance company that is admitted and licensed to do business in the State of California and that is rated A:VIII or better according to the most recent A.M. Best Co. Rating Guide, with City, and its officers, agents, volunteers, and employees named as an additional insureds, that has an aggregate liability limit (subject to commercially reasonable adjustments) of at least Two Million Dollars (\$2,000,000), and a per occurrence liability limit of at least One Million Dollars (\$1,000,000), and that will protect City from any claims that may arise from the Encroachments, including those for which Licensee is obligated to indemnify City against hereunder. However, if the Licensee is self-insured for the same liability amounts as specified about relative to aggregate and per occurrence then that would be acceptable.

6. City Work. Licensee's right to maintain the Encroachment is subject to City's right to cause construction, installation, removal, maintenance, repair and/or replacement work to be conducted on the Property from time to time provided that it shall give reasonable prior notice to Licensee of the commencement of such work and shall use its best efforts to not unreasonably interfere with the Encroachment during the performance of such work.

7. Revocation. City may revoke this Encroachment License at any time, with or without cause, by providing Licensee with written notice. Licensee must, at the sole cost, risk and responsibility of Licensee, remove and/or relocate the Encroachment, and restore the Property to substantially the same condition that existed prior to the Encroachment, as directed by City within thirty (30) days of written notice from City or as otherwise agreed to in writing by the City. In case of an emergency, City may require that the work be done within less than such thirty (30) day period. If Licensee fails to so remove and/or relocate the Encroachment and restore the Property, City may cause such work to be done, and Licensee shall be liable to City for all costs incurred by City in connection therewith. In the event Licensee fails to reimburse City for such costs within thirty (30) days of written demand, such costs shall be a lien against Licensee's property. Furthermore, in the event City must maintain an action to enforce any of the obligations of Licensee under, or arising out of, this Encroachment, and is successful in such action, Licensee agrees to pay all cost and expenses, including reasonable attorney's fees, incurred by City in connection therewith.

8. Notices: Any notice, request, direction, demand, consent, waiver, approval or other communication required or permitted to be given hereunder shall not be effective unless it is given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, or (c) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and addressed to the parties at the addresses stated below, or at such other address as either party may hereafter notify the other in writing as aforementioned:

Licensee: Attention: Upland Unified School District
 390 N. Euclid Avenue
 Upland, CA 91786
 Attention: Superintendent

City: City of Upland
 460 North Euclid Avenue
 Upland, California 91786
 Attention: City Manager

With a copy to: Best Best & Krieger LLP
 2855 East Guasti Road
 Suite 400
 Ontario, CA 91761
 Attention: Upland City Attorney

Service of any such notice or other communications so made shall be deemed effective on the day of actual delivery (whether accepted or refused) as shown by the addressee's return receipt

if by certified mail, and as confirmed by the courier service if by courier; provided, however, that if such actual delivery occurs after 5:00 p.m. (local time where received) or on a non-business day, then such notice or demand so made shall be deemed effective on the first business day immediately following the day of actual delivery. No communications via facsimile and/or electronic mail shall be effective to give any notice, request, direction, demand, consent, waiver, approval or other communications hereunder.

9. Counterparts. This Encroachment Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties had executed the same counterpart.

10. Successors and Assigns. This Encroachment Agreement shall be binding upon and shall inure to the benefit of any transferee of Licensee's interest in the Encroachment. Licensee or Licensee's transferee shall provide written notice to City of any such transfer within thirty (30) days thereof.

11. Recordation: City may immediately record this Encroachment License Agreement and Licensee agrees to reimburse City for any recordation fees incurred by City in connection therewith.

[This Space Intentionally Left Blank; Signatures Begin On The Next Page]

IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement as of this 9th day of August, 2021.

CITY:

CITY OF UPLAND, a municipal corporation

By: _____



Name: Stephen Parker

Its: Acting City Manager

ATTEST:

By: _____




Name: Keri Johnson

Its: City Clerk

APPROVED AS TO FORM:

By: _____



Name: Stephen P. Deutsch

Its: City Attorney

LICENSEE:

Upland Unified School District

390 N. Euclid Avenue

Upland, CA 91786

Attention: Superintendent

By: _____

Name: ~~Nancy Kelly~~

Lynn J. Carmen Day, Ed. D.

Its: Superintendent

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino)

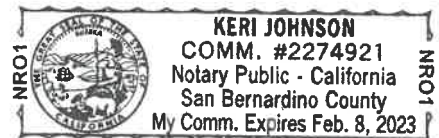
On August 25, 2021 before me, Keri Johnson, Notary Public
(insert name and title of the officer)

personally appeared Stephen Parker,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)



IN WITNESS WHEREOF, the parties hereto have entered into this Encroachment License Agreement as of this 9th day of August, 2021.

CITY: CITY OF UPLAND, a municipal corporation

By: _____

Name: Stephen Parker

Its: Acting City Manager

ATTEST:

By: _____

Name: Keri Johnson

Its: City Clerk

APPROVED AS TO FORM:

By: _____

Name: Stephen P. Deitsch

Its: City Attorney

LICENSEE:

Upland Unified School District

390 N. Euclid Avenue

Upland, CA 91786

Attention: Superintendent

By: Lynn J. Carmen Day

Name: Lynn J. Carmen Day, Ed. D.

Its: Superintendent

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Bernardino)

On February 11, 2022 before me, Robyn Myers-Wilson, Notary Public
(insert name and title of the officer)

personally appeared Lynn J. Carmen Day Superintendent,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

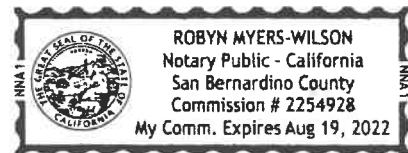


EXHIBIT A

Elevation and Design of Electronic Changeable-Copy Sign



D/F MARQUEE POLE SIGN / 3/8"=1'-0"



962 W. Foothill Blvd., Azusa, CA 91702
(626) 969-2222 fax (626) 969-5511
e-mail: customsignsinc@juno.com

Title		UPLAND HIGH SCHOOL		Drawing Date	5-16-19
Location		565 W. 11th st., Upland, Ca. 91786		<p>This is an original drawing created by CUSTOM SIGNS, INC. The information contained in this document is confidential work-product material and is intended for the eyes of the designated recipient only. If you are not the designated recipient, you are hereby notified that any unauthorized review, dissemination, distribution or copying of this document, and that which is transmitted herewith, is strictly prohibited. Client agrees to pay 25% of the retail selling price of this display upon demand hereof, if said original design is used or reproduced in whole or in part.</p>	
Salesman	TS	Designer	Mark Garcia		
Client Approval		Date			

EXHIBIT B

Depiction of the Encroachment and Site Plan

Legal Description

ONTARIO COLONY LANDS W 1/2 LOT 534 EX N 52 FT AND EX ST 4.54 AC M/L

APN: 1046-021-01

